

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

CIVIL NO. 1:18-CV-00236-CSM

SOPHIA WILANSKY, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MORTON COUNTY, NORTH DAKOTA; )  
KYLE KIRCHMEIER in his official )  
capacity; ADAM J. DVORAK, in his )  
personal capacity; and JONATHAN R. )  
MOLL, in his personal capacity, )  
)  
Defendants. )

**COUNTY DEFENDANTS’ RULE 60(A)  
MOTION TO CORRECT MISTAKE IN  
ORDER GRANTING MOTION TO  
DISMISS**

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Pursuant to Rule 7.1(B) of the Local Rules of the United States District Court for the District of North Dakota and Rules 60(a) of the Federal Rules of Civil Procedure, Defendants Morton County, Kyle Kirchmeier, and Jonathan R. Moll (hereinafter collectively “County Defendants”) request a correction of mistakes contained in the Court’s *Order Granting Motion to Dismiss* (doc. 290) filed April 3, 2024 (hereinafter “Order”). Specifically, there appear to be two mistakes in paragraph 33 of the Order.

First, North Dakota Century Code § 28-0-22.1 cited in paragraph 33 of the Order provides a three-year statute of limitations for state law claims asserted against the state or its employees and officials acting within the scope of their employment or office. However, Defendant Jonathan Moll, at issue in paragraph 33, is and was at the time of the events at issue an employee of the Morton County Sheriff’s Department – a political subdivision. The correct statute providing a similar three-year statute of limitations for claims against political subdivisions and employees thereof is N.D.C.C. § 32-12.1-10, discussed at page 33 of County Defendants’ Principal Brief

(doc. 271).

The Second mistake in paragraph 33 of the Order relates to the description of the nature of Wilansky's claim against Defendant Moll. Specifically, paragraph 33 currently provides, in relevant part: "The claims against Moll accrued on November 21, 2016, when he threw the flash-bang grenade at Wilansky." (Underline added for emphasis.) Wilansky's Second Amended Complaint does not allege Moll threw a flash-bang grenade at Wilansky, but rather alleges Moll shot an Aerial Signaling/Warning Munition which hit Wilansky's left forearm and exploded, as correctly noted in paragraph 7 and footnote 3 of the Order. While footnote 3 of the Order indicates "the Court will refer to the Aerial Signaling/Warning Munitions launched by Moll simply as a flashbang[]" (underline added for emphasis), reference in paragraph 33 to a "grenade" being "thrown" is inconsistent with Wilansky's allegation a "munition" was "launched" from a 12 gauge shotgun – two entirely different devices. While County Defendants deny either device was utilized against Wilansky, County Defendants recognize that for purposes of the Order granting Rule 12 relief, the Court is required to accept Wilansky's factual allegations as true.

This motion is based upon all of the files, records, and proceedings herein, including, among other things, the memorandum of law submitted in support of this motion.

Dated this 4th day of April, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 4, 2024, a true and correct copy of the foregoing **COUNTY DEFENDANTS' RULE 60(A) MOTION TO CORRECT MISTAKE IN ORDER GRANTING MOTION TO DISMISS** was filed electronically with the Clerk of Court through ECF.

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